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nursing care and related services in accordance with these rules.

B. A nursing home license is required for the facility if any of the persons therein need or receive nursing care. Examples of nursing care:

(1) bedside care, including administration of medications, irrigations and catheterizations, applications of dressings or bandages;

(2) rehabilitative nursing techniques; and

(3) other treatments prescribed by a physician which require technical knowledge, skill, and judgment as possessed by a registered nurse.

C. In addition the dietary, social, spiritual, educational, and recreational needs of these patients shall be fulfilled.

D. The director of the nursing service shall be a registered nurse employed 40 hours per week during the day shift.

E. In addition, a registered nurse or a licensed practical nurse shall be employed so that on-site nursing coverage is provided eight hours per day, seven days per week during the day shift.

F. Provision shall also be made for a registered nurse to be on call during all hours when a registered nurse is not on duty.

Subp. 9. Nursing personnel. The term "nursing personnel" shall include registered nurses, licensed practical nurses, nurse aides, and orderlies.

Subp. 10. Patient. A "patient" is any individual cared for in a nursing home.

Subp. 11. Resident. A "resident" is any individual cared for in a boarding care home.

MS s 144.56; 144A.02 to 144A.08

#### 4655.0110 FOREWORD.

These regulations will serve as the basis for licensing nursing homes and boarding care homes in accordance with the state law for licensing hospitals and related institutions, Minnesota Statutes, sections 144.50 to 144.58.

Federal programs under the Social Security Act, as amended require certification of facilities which will be participating. All facilities must be licensed by the state prior to certification and must also meet any additional requirements as established by such certification standards.

The purpose of the licensing law and these regulations is to protect the public health through the development and enforcement of minimum requirements for the care of patients and residents in convalescent or long-term care facilities. Moreover, these regulations serve an educational purpose in providing guidelines for quality patient and residential care.

MS s 144.56; 144A.02 to 144A.08

#### 4655.0300 LICENSING IN GENERAL.

Subpart 1. Required. For the purpose of these rules, a state license is required for any facility where nursing,

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personal, or custodial care is provided for five or more aged or infirm persons who are not acutely ill.

Subp. 2. License fees. Each application for either an initial or renewal license to operate a nursing home or boarding care home shall be accompanied by a fee based upon the formula established in part 4735.0200. A bed must be licensed if it is available for use by patients or residents. If the number of licensed beds is increased during the term of the license, \$12 for each additional bed shall be paid. There shall be no refund for a decrease in licensed beds.

Subp. 3. License expiration date. Initial and renewal licenses shall be issued for the calendar year for which application is made and shall expire on December 31 of such year. License renewals shall be applied for on an annual basis. Applications for license renewals shall be submitted no later than December 31 of the year preceding the year for which application is made. Any application for an initial license submitted after November 1 shall be considered as an application for the following year; provided, however, that a license may be issued and be effective prior to January 1 of the year for which application is made without payment of fees for two years.

Subp. 4. License to be posted. The license shall be conspicuously posted in an area where patients or residents are admitted.

Subp. 5. Separate licenses. Separate licenses shall be required for institutions maintained on separate premises even though operated under the same management. A separate license shall not be required for separate buildings maintained by the same owner on the same premises.

MS s 144.56; 144A.02 to 144A.08

#### 4655.0310 PROCEDURE FOR LICENSING OF BOARDING CARE HOMES.

Application for a license to establish or maintain a boarding care home shall be made in writing and submitted on forms provided by the department. If the applicant is a corporation, the officers shall furnish the department a copy of the articles of incorporation and bylaws and any amendments thereto as they occur. In addition, out-of-state corporations shall furnish the department with a copy of the certificate of authority to do business in Minnesota. No license shall be issued until all final inspections and clearances pertinent to applicable laws and regulations have been complied with.

MS s 144.56

#### 4655.0320 PROCEDURES FOR LICENSING NURSING HOMES.

Subpart 1. Initial licensure. For the purpose of this part, initial licensure applies to newly constructed facilities designed to operate as nursing homes and to other facilities not already licensed as nursing homes. Applicants for initial licensure shall complete the license application form supplied by the department. Applications for initial licensure must be submitted at least 90 days before the requested date for licensure and must be accompanied by a license fee based upon the formula established in part 4735.0200.

To be issued a license, the applicant must file with the department a copy of the architectural and engineering plans and specifications of the facility as prepared and certified by an architect or engineer registered to practice in Minnesota.

If the applicant for licensure is a corporation, it shall submit with the application a copy of its articles of

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incorporation and bylaws. A foreign corporation shall also submit a copy of its certificate of authority to do business in Minnesota. Applicants must submit these documents in order to be issued licenses. The department shall issue the initial license as of the date the department determines that the nursing home is in compliance with Minnesota Statutes, sections 144A.02 to 144A.16 and parts 4655.0090 to 4655.9900 and 4660.0100 to 4660.9940, unless the applicant requests a later date.

Subp. 2. Renewed licenses. An applicant for license renewal shall complete the license application form supplied by the department. Applications must be submitted at least 60 days before the expiration of the current license and must be accompanied by a license fee based upon the formula established in part 4735.0200. The department shall issue a renewed license if a nursing home continues to satisfy the requirements, standards, and conditions prescribed by Minnesota Statutes, sections 144A.01 to 144A.16 and parts 4655.0090 to 4655.9900 and 4660.0100 to 4660.9940.

If the licensee is a corporation, it shall submit any amendments to its articles of incorporation or bylaws along with the renewal application.

If the application specifies a different licensed capacity from that provided on the current license, the licensee shall follow the procedures relating to license amendments specified in subpart 6. If the changes are not approved before the current license expires, the renewed license will be issued without reflecting the requested changes.

Subp. 3. Transfer of interests; notice. A controlling person, as defined in Minnesota Statutes, section 144A.01, subdivision 4, who transfers a beneficial interest in the nursing home shall notify the department, in writing, at least 14 days before the date of the transfer. The written notice must contain the name and address of the transferor, the name and address of the transferee, the nature and amount of the transferred interests, and the date of the transfer.

Subp. 4. Transfer of interest; expiration of license. A transfer of a beneficial interest will result in the expiration of the nursing home's license under the following conditions:

A. if the transferred beneficial interest exceeds ten percent of the total beneficial interest in the licensee, in the structure in which the nursing home is located, or in the land upon which the nursing home is located, and if, as the result of the transfer, the transferee then possesses a beneficial interest in excess of 50 percent of the total beneficial interest in the licensee, in the structure in which the nursing home is located, or in the land upon which the nursing home is located; or

B. if the transferred beneficial interest exceeds 50 percent of the total beneficial interest in the licensee, the structure in which the nursing home is located, or in the land upon which the nursing home is located.

Under either of these conditions, the nursing home license expires at the time of relicensure or 90 days after the date of the transfer or 90 days after the date when notice of transfer is received, whichever date is later. If the current license expires before the end of the 90-day period, the licensee shall apply for a renewed license in accordance with subpart 2. The department shall notify the licensee by certified mail at least 60 days before the license expires.

Subp. 5. Transfer of interest; relicensure. A controlling person may apply for relicensure by submitting the license application form at least 45 days before the license expiration

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date. Application for relicensure must be accompanied by a license fee based upon the formula established in part 4735.0200. If the applicant for relicensure is a corporation, it shall submit a copy of its current articles of incorporation and bylaws with the license application. A foreign corporation shall also submit a copy of its certificate of authority to do business in Minnesota. The department shall relicense the nursing home as of the date the commissioner determines that the prospective licensee complies with Minnesota Statutes, sections 144A.02 to 144A.16 and parts 4655.0090 to 4655.9900 and 4660.0100 to 4660.9940 unless the applicant requests a later time. The former licensee remains responsible for the operation of the nursing home until the nursing home is relicensed.

Subp. 6. Amendment to the license. If the nursing home requests changes in its licensed capacity or in its license classification, it shall submit the request on the application for amendments to the license. This application must be submitted at least 30 days before the requested date of change and if an increase in the number of licensed beds is requested, accompanied by a fee based upon the formula established in part 4735.0200. The department shall amend the license as of the date the department determines that the nursing home is in compliance with Minnesota Statutes, sections 144A.01 to 144A.16 and parts 4655.0090 to 4655.9900 and 4660.0100 to 4660.9940, unless a later date is requested by the licensee. The amendment to a license is effective for the remainder of the nursing home's licensure year.

Subp. 7. Issuing conditions or limitations on the license. The department shall attach to the license any conditions or limitations when necessary to assure compliance with the laws and rules governing the operation of the nursing home or to protect the health, treatment, safety, comfort, and well-being of the nursing home's residents. A condition or limitation may be attached when a license is first issued, when it is renewed, or during the course of the licensure year.

Subp. 8. Reasons for conditions or limitations. In deciding to condition or limit a license the department shall consider the following:

A. the nature and number of correction orders or penalty assessments issued to the nursing home or to other nursing homes having some or all of the same controlling persons;

B. the permitting, aiding, or abetting of the commission of any illegal act in the nursing home by any of the controlling persons or employees of the nursing home;

C. the performance of any acts contrary to the welfare of the residents in a nursing home by a controlling person or employee;

D. the condition of the physical plant or physical environment;

E. the existence of any outstanding variances or waivers; or

F. the number or types of residents the nursing home is able to provide for.

Subp. 9. Types of conditions or limitations. The department shall impose one or more of the following conditions or limitations:

A. restrictions on the number or types of residents to be admitted or permitted to remain in the nursing home;

B. restrictions on the inclusion of specified individuals as controlling persons or managerial employees; or

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C. imposition of schedules for the completion of specified activities.

Subp. 10. Statement of conditions or limitations. The department shall notify the applicant or licensee, in writing, of its decision to issue a conditional or limited license. The department shall inform the applicant or licensee of the reasons for the condition or limitation and of the right to appeal. Unless otherwise specified, any condition or limitation remains valid as long as the licensee of the nursing home remains unchanged or as long as the reason for the condition or limitation exists. The licensee shall notify the department when the reasons for the condition or limitation no longer exists. If the department determines that the condition or limitation is no longer required, it shall be removed from the license.

The existence of a condition or limitation must be noted on the face of the license. If the condition or limitation is not fully stated on the license, the department's licensure letter containing the full text of the condition or limitation must be posted alongside the license in an accessible and visible location.

Subp. 11. Effect of a condition or limitation. A condition or limitation has the force of law. If a licensee fails to comply with a condition or limitation, the department may issue a correction order or assess a fine or it may suspend, revoke, or refuse to renew the license in accordance with Minnesota Statutes, section 144A.11.

If the department assesses a fine, the fine is \$250. The fine accrues on a daily basis in accordance with Minnesota Statutes, section 144A.10.

Subp. 12. Appeal procedure. The applicant or licensee may contest the issuance of a conditional or limited license by requesting a contested case proceeding under the Administrative Procedure Act, Minnesota Statutes, sections 14.57 to 14.70, within 15 days after receiving the notification described in 10. The request for a hearing must set out in detail the reasons why the applicant contends that a conditional or limited license should not be issued.

Subp. 13. License application forms. The department shall furnish the applicant or the licensee with the necessary forms to obtain initial or renewed licensure or to request relicensure of the nursing home after a transfer of interest. The license forms must require that the information described in subparts 14 to 16 be provided.

Subp. 14. General information. General information:

A. the name, address, and telephone number of the nursing home;

B. the name of the county in which the nursing home is located;

C. the legal property description of the land upon which the nursing home is located;

D. the licensed bed capacity;

E. the designation of the classification of ownership, e.g., state, county, city, city/county, hospital district, federal, corporation, nonprofit corporation, partnership, sole proprietorship, or other entity;

F. the name and address of the controlling person or managerial employee who shall be responsible for dealing with the commissioner of health on all matters relating to the

nursing home license and on whom personal service of all notices and orders shall be served;

G. the location and square footage of the floor space constituting the facility; and

H. for the purposes of license renewal, an indication of compliance with the provisions regarding the submission of financial statements to the Department of Public Welfare.

Subp. 15. Disclosure of controlling persons. In accordance with Minnesota Statutes, section 144A.03, which requires that the nursing home license application identify the name and address of all controlling persons of the nursing home, as defined in Minnesota Statutes, section 144A.01, subdivision 4:

A. The name and address of the administrator;

B. The name and address of the licensee of the nursing home;

C. If the licensee is a public body or governmental agency, the name and address of all individuals on the governing body who are officers or directors of the nursing home or who receive any remuneration from the nursing home;

D. If the licensee is a partnership, the name and address of each general partner;

E. If the licensee is a corporation, the name, address, and position of each individual who is an officer or director;

F. If the licensee is a business association, the name and address of each individual who is an officer and director of the association;

G. The previous work experience in Minnesota nursing homes during the past two years for each individual identified under items A to F;

H. If the licensee is a partnership, the name and address of every individual, partnership, corporation, or other business association having an ownership interest in the partnership;

I. If the licensee is a corporation, the name and address of every individual, partnership, corporation, or other business association having an ownership interest in the corporation;

J. If the licensee is a business association, the name and address of every individual, partnership, corporation, or business association having an ownership interest in the business association;

K. The name and address of each individual, partnership, corporation, or other business association having an ownership interest in one or more of the following:

(1) the land on which the nursing home is located;

(2) a structure in which the nursing home is located;

(3) any mortgage, contract for deed, or other obligation secured in whole or in part by the land or structure comprising the nursing home; or

(4) any lease or sublease of the land, structure, or facilities comprising the nursing home;

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L. If a partnership, corporation, or other entity or association has been identified in response to items H to K, the following information must be provided:

(1) If a partnership is identified, the name and address of all partners;

(2) If a corporation is identified, the name and address of all individuals, partnerships, corporations, or other business associations having an ownership interest in that corporation;

(3) If a business association is identified, the name and address of all individuals, partnerships, corporations, or business associations having an ownership interest in that association.

If a partnership, corporation, or other business association is identified in response to this item, the name and address of the individuals, partnerships, corporations, or other business associations having an ownership interest therein shall be provided. The disclosure of ownership interests in all subsequently identified partnerships, corporations, or business associations shall continue until only natural persons are disclosed; and

M. For each individual identified in response to the questions above, the following information must be provided:

(1) the name and address of any individual who has the right to acquire that person's ownership interest through the exercise of an option or similar right; and

(2) the name and address of that person's spouse or relative or a relative of the spouse residing in the home of that person who has the right to control the ownership interest, such as voting rights or the right to share in the income from that interest.

Subp. 16. Disclosure of managerial employees. Provide the name and address of all assistant administrators and service directors, and indicate their previous work experience in nursing homes located in Minnesota during the past two years.

MS s 144A.02 to 144A.07

#### 4655.0400 TYPES OF PATIENTS OR RESIDENTS NOT TO BE RECEIVED.

Subpart 1. Admittance of certain adults. Maternity patients, disturbed mental patients (see part 4655.6600), and patients or residents, who in the opinion of the attending physician have or are suspected of having a disease endangering other patients or residents shall not be admitted to or retained in either a nursing home or a boarding care home.

Subp. 2. Admittance of children. A nursing home or a boarding care home for adults shall not receive either sick children or well children for care. For the purpose of these rules, children are defined as persons under 16 years of age.

MS s 144.56; 144A.02 to 144A.08

#### 4655.0500 CAPACITY PRESCRIBED.

Each license shall specify the maximum allowable number of patients or residents to be cared for at any one time. No greater number of patients or residents shall be kept than is authorized by the license.

MS s 144.56; 144A.02 to 144A.08

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4655.0600 HOME NOT TO BE MISREPRESENTED.

A nursing home or a boarding care home shall not use in its title the words of description: "Hospital," "Sanitorium," "Rehabilitation Facility," "Rehabilitation Center," or any other words which indicate that a type of care or service is provided which is not covered by the license.

MS s 144.56; 144A.02 to 144A.08

4655.0700 NO DISCRIMINATION.

There shall be no discrimination with respect to patients or residents, employees, or staff on the ground of race, color, or national origin.

MS s 144.56; 144A.02 to 144A.08

4655.0800 PRELIMINARY PLANNING.

Contact shall be made with the department to discuss the proposed program, location, staffing requirements, and other pertinent aspects prior to planning a new care facility or purchasing or leasing an existing care facility.

MS s 144.56; 144A.02 to 144A.08

4655.0900 EVALUATION.

Facilities shall be subject to evaluation and approval of the physical plant and its operational aspects prior to a change in ownership, classification, capacity, or services.

MS s 144.56; 144A.02 to 144A.08

4655.1000 VARIANCE AND WAIVERS.

A nursing home or boarding care home may request that the department grant a variance or waiver from the provisions of these rules. All requests for a variance or waiver shall be submitted to the department in writing. Each request shall contain the following information:

- A. the specific rule or rules for which the variance or waiver is requested;
- B. the reasons for the request;
- C. the alternative measures that will be taken if a variance or waiver is granted;
- D. the length of time for which the variance or waiver is requested; and
- E. such other relevant information necessary to properly evaluate the request for the variance or waiver.

MS s 144.56; 144A.02 to 144A.08

4655.1010 CRITERIA FOR EVALUATION.

The decision to grant or deny a variance or waiver shall be based on the department's evaluation of the following criteria:

- A. the variance or waiver will not adversely affect the health, treatment, comfort, safety, or well-being of a

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patient or resident;

B. the alternative measures to be taken, if any, are equivalent to or superior to those prescribed in the rules; and

C. compliance with the rule or rules would impose an undue burden upon the applicant.

MS s 144.56; 144A.02 to 144A.08

#### 4655.1020 NOTIFICATION OF VARIANCE.

The applicant shall be notified in writing of the department's decision. If a variance or waiver is granted, the notification shall specify the period of time for which the variance or waiver will be effective and the alternative measures or conditions, if any, to be met by the applicant.

MS s 144.56; 144A.02 to 144A.08

#### 4655.1030 EFFECT OF ALTERNATIVE MEASURES OR CONDITIONS.

All alternative measures or conditions attached to a variance or waiver shall have the force and effect of the licensure rule(s) and shall be subject to the issuance of correction orders and penalty assessments in accordance with the provisions of Minnesota Statutes, sections 144.653 and 144A.10. The period of time for correction and the amount of fines specified for the particular rule for which the variance or waiver was requested, shall apply.

MS s 144.56; 144A.02 to 144A.08

#### 4655.1040 RENEWAL.

Any request for the renewal of a variance or waiver shall be submitted in writing prior to its expiration date. Renewal requests shall contain the information specified in part 4655.1000. A variance or waiver shall be renewed by the department if the applicant continues to satisfy the criteria contained in parts 4655.1010 and 4655.1020 and demonstrates compliance with the alternative measures or conditions imposed at the time the original variance or waiver was granted.

MS s 144.56; 144A.02 to 144A.08

#### 4655.1050 DENIAL, REVOCATION, OR REFUSAL TO RENEW.

The department shall deny, revoke, or refuse to renew a variance or waiver if it is determined that the criteria specified in parts 4655.1010 and 4655.1020 are not met. The applicant shall be notified in writing of the decision to deny, revoke, or refuse to renew the variance or waiver, informed of the reasons for the denial, revocation, or refusal to renew, and informed of the right to appeal this decision.

MS s 144.56; 144A.02 to 144A.08

#### 4655.1060 APPEAL PROCEDURE.

An applicant may contest the denial, revocation, or refusal to renew a variance or waiver by requesting a contested case hearing under the provisions of the Administrative Procedure Act, Minnesota Statutes, chapter 14. The applicant shall submit, within 15 days of the receipt of the department's decision, a written request for a hearing. The request for hearing shall set forth in detail the reasons why the applicant

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contends the decision of the department should be reversed or modified. At the hearing, the applicant shall have the burden of proving that it satisfied the criteria specified in parts 4655.1010 and 4655.1020, except in a proceeding challenging the revocation of a variance or waiver.

MS s 144.56; 144A.02 to 144A.08

ADMINISTRATION

4655.1200 LICENSEE.

Subpart 1. Duties in general. The licensee in each nursing home or boarding care home shall be responsible for its management, control, and operation.

Subp. 2. Specific duties. The licensee shall develop written bylaws and/or policies which shall be available to all members of the governing body and shall assume full legal responsibility for matters under its control, for the quality of care rendered and for compliance with applicable laws and rules of legally authorized agencies. The responsibilities of the licensee shall include:

A. Full disclosure of each person having an interest of ten percent or more of the ownership of the home to the board with any changes promptly reported in writing. In case of corporate ownership, the name and address of each officer and director shall be made known. If the home is organized as a partnership, the name and address of each partner shall be furnished. In the case of a home operated by a lessee, the persons or business entities having an interest in the lessee organization shall be reported and an executed copy of the lease agreement furnished. If the home is operated by the holder of a franchise, disclosure as specified above shall be made as to the franchise holder who shall also furnish an executed copy of the franchise agreement.

B. Appointment of a licensed nursing home administrator or a person in charge who shall be responsible for the operation of the home in accordance with law and established policies.

C. The authority to serve as administrator or person in charge shall be delegated in writing.

D. The administrator of a hospital with a convalescent and nursing care unit may serve both units. See the Nursing Home Administrator Licensing Law, Laws of Minnesota 1969, chapter 770.

E. Notification of the termination of service of the administrator or the person in charge as well as the appointment of a replacement shall be given within five days in writing to the board by the governing body of the home. If a licensed nursing home administrator or person in charge of the boarding care home is not available to assume the position immediately, such notification to the board shall include the name of the person temporarily in charge of the home. The governing body of a nursing home shall not employ an individual as the permanent administrator until it is determined that he qualifies for licensure as a nursing home administrator in Minnesota. See the Nursing Home Administrator Licensing Law, Laws of Minnesota 1969, chapter 770.

F. Provision of a competent staff and maintenance of professional standards in the care of patients and residents.

G. Employment of qualified personnel. There shall be sufficient personnel to provide the basic services such as food service, housekeeping, laundry, and plant maintenance.

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